

DEPARTMENT OF EDUCATION**34 CFR Part 694**

RIN 1840-AC82

Gaining Early Awareness and Readiness for Undergraduate Programs**AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Proposed regulations.

SUMMARY: The Secretary proposes to amend the regulations governing the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. These amendments are needed because the current regulations applied only to the fiscal year 1999 competition. These proposed regulations will apply to any future GEAR UP competitions and were drafted subject to the negotiated rulemaking process required by section 492 of the Higher Education Act of 1964 (HEA), as amended.

DATES: We must receive your comments on or before January 20, 2000.

ADDRESSES: Address all comments about these proposed regulations to Edward Fuentes, U.S. Department of Education, 1990 K Street, NW., room 6107, Washington, DC 20006. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov. You must include the term GEAR UP in the subject line of your electronic message.

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Lisa Aserkoff, 400 Maryland Ave., SW., Room 6E205, Washington, DC 20202. Telephone: (202) 401-6296. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:**Invitation to Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have the maximum effect in developing the final

regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 6107, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205-8113 or (202) 260-9585. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

Background

Section 403 of the Higher Education Amendments of 1998 (Amendments), (Public Law 105-244), enacted October 7, 1998, amending the Higher Education Act of 1965 (HEA) established the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), a program designed to give more low-income students the skills, encouragement, and preparation needed to pursue postsecondary education, and to strengthen academic programs and student services at participating schools.

On March 2, 1999, we published final regulations implementing GEAR UP for fiscal year 1999 (64 FR 10183), using the Department's authority under section 437(d) of the General Education Provisions Act to waive rulemaking requirements for regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)).

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. For fiscal year 1999, we determined that, to make grants under this competition before the funds expired, the use of negotiated rulemaking would be impracticable and contrary to the public interest under section 492(b)(2) of the HEA.

The proposed regulations contained in this NPRM were developed through the use of negotiated rulemaking. The proposed regulations reflect the final consensus of the GEAR UP negotiating committee (committee), which was made up of the following members:

California State University System
The College Board
Council of the Great City Schools
Ford Foundation
High School Equivalency Program and the College Assistance Migrant Program Association and the National Association for Migrant Education, Inc. (a coalition)
Hispanic Association of Colleges and Universities
"I Have a Dream" Foundation
National Alliance of Black School Educators
National Association for College Admission Counseling
National Association for Equal Opportunity in Higher Education
National Association of Independent Colleges and Universities
National Association of Secondary School Principals and the National Forum on Middle-Grades Reform (a coalition)
National Association of State Student Grant and Aid Programs
National Coalition of Title I/Chapter I Parents
National Collaboration for Youth
National Council of Higher Education Loan Programs
National Education Association
United States Chamber of Commerce
United States Department of Education
United States Student Association

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Background

GEAR UP provides two types of competitive grants: State grants and Partnership grants. State grants must provide early college preparation and awareness activities through the early intervention component of the GEAR UP program and scholarships for participating students through the scholarship component of GEAR UP. Partnerships must provide early college preparation and awareness activities through the early intervention component and are encouraged to provide college scholarships, although they are not required to do so.

Section 694.1 Maximum Grant Amounts

Current Regulations: The current regulations set a maximum amount that the Secretary could award each year to a Partnership or a State under GEAR UP. For Partnership grants, the maximum amount that the Secretary could award each year was calculated by multiplying the number of students the Partnership proposes to serve that year, as stated in the Partnership's plan, by \$800.

For State grants, the current regulations set the maximum dollar amount that the Secretary could award each year at \$5 million.

Proposed regulations: For Partnership grants, the proposed regulations would keep the same maximum amount that the Secretary could award each year as under current regulations, an amount calculated by multiplying the number of students the Partnership proposes to serve that year by \$800.

Reasons: Negotiators agreed that this is an appropriate maximum average per student, per year, Federal dollar amount to spend under GEAR UP. We believe that this maximum average Federal dollar amount per student will ensure that the Department can fund a substantial number of projects nationwide each year, while still providing for a broad range of services for those students served.

Proposed regulations: For State grants the proposed regulations would state that the Secretary establishes the maximum amount that may be awarded each fiscal year for a GEAR UP State grant in a notice published in the **Federal Register**. The negotiators recognized that a maximum grant amount was necessary to ensure that we could fund a substantial number of projects each year, while still providing the services necessary to ensure a successful program.

Several negotiators, however, expressed some concern that the maximum amount for the grant was set

in regulation. These negotiators mentioned changes in funding from Congress for the program as a potential reason why there needed to be discretion each year in setting the maximum State grant amount. We therefore changed the regulations so that the maximum amount that the Secretary could award each year for a GEAR UP State grant would be announced each fiscal year in a notice published in the **Federal Register**.

Section 694.2 Students Served By the Cohort Approach Under the Early Intervention Component

Statute: Section 404B(g) of the HEA requires that Partnerships provide services to at least one grade level of students, beginning not later than the 7th grade. In addition, Partnerships must ensure that those services are provided through the 12th grade to students in the participating grade levels.

Current Regulations: The current regulations restate the statutory language, but also add language that would require States that choose to use the cohort approach to follow the same rules as Partnerships. The regulations also established the word "cohort" as the term used throughout the regulations to refer to the entire grade levels of students the Partnership (or State) served.

Proposed Regulations: The proposed regulations would be the same as the current regulations, with one addition. Partnerships, and States using the cohort approach, must ensure that supplemental appropriate services are targeted to the students with the greatest needs.

Reasons: The committee discussed the problems associated with serving an entire grade level of students in large schools. Several negotiators felt that it was important to try to ensure that the students who needed the services the most didn't get lost among the many other students also served in their school under GEAR UP. The committee discussed how to provide those students with appropriate services, without violating the statute, which requires that services be provided to entire grade levels of students.

The negotiating committee discussed several variations of language initially offered by several negotiators. The language originally offered would have required Partnerships to ensure that direct services be delivered to the most disadvantaged students within a cohort. Several other negotiators, including the Department, while recognizing the concerns the language was trying to address, believed that this language was

not the best way to address those concerns. The committee discussed the use of the word "disadvantaged," and wanted to be sure that services weren't only targeted at economically disadvantaged students.

In addition, negotiators were concerned about the word "delivery," and whether it meant that the Partnership had to ensure the student actually received all of the services. Several negotiators wondered how the Partnership could ensure that each disadvantaged student actually receives all of the services if a student adamantly refuses, or doesn't show up, and what the consequences would be for a Partnership if services were not delivered. By contrast, under the proposed regulations, Partnerships would be able to provide services to the entire cohort, tailor services to students' needs, and target additional services appropriate to students with the greatest needs.

In addition, several negotiators were concerned that the requirement as a whole could be read to imply that not all students in the cohort needed to receive services. Several negotiators emphasized that one of the most important attributes of the GEAR UP program was the whole-grade approach, and the negotiators wanted to be sure that the suggested additional language wouldn't lead to Partnerships providing services to only some students in a grade.

The committee then discussed several wording alternatives to address these concerns. One negotiator suggested changing "disadvantaged" to "special needs." Some other negotiators, however, were concerned that the term "special needs" might imply only learning or physical disabilities. In addition, some negotiators suggested removing "delivery," and instead saying that Partnerships must ensure that services were "targeted to" certain students. To address the concern about the whole-grade approach, the words "supplemental appropriate services" were added, so that it was clear that while all students should receive appropriate services, students with the greatest needs should get appropriate supplemental services.

The committee then reached final consensus on a provision that requires Partnerships, or States using the cohort approach, to ensure that supplemental appropriate services are targeted to the students with the greatest needs. The committee believed that this language addresses the concern that, in large cohorts, the neediest students might "get lost," and might need some extra attention, but still makes clear that the

attention must be in addition to services provided to the entire cohort. The committee also believed that referring to "students with the greatest needs" would be flexible enough to allow individual school districts to decide how to determine which students most needed the additional services.

Section 694.3 Cohort Requirements

Statute: Section 404B(g) of the statute requires that Partnerships must provide services to at least one grade level of students, beginning not later than the 7th grade, in a participating school that has a 7th grade and in which at least 50 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act (or, if a Partnership determines that it would promote the effectiveness of a program, an entire grade level of students, beginning not later than the 7th grade, who reside in public housing as defined in section 3(b)(1) of the United States Housing Act of 1937).

Current Regulations: The current regulations restate the statute, but divide the requirements into individual paragraphs, to make statutory language clearer.

Proposed Regulations: The proposed regulations would keep the same language as in current regulations.

Reason: The negotiators agreed that the regulatory language would help clarify the statutory requirements. The committee discussed whether there was any way to provide services to students before they reached schools that include a 7th grade. Some negotiators mentioned that in some States there were many elementary schools that didn't include a 7th grade, but that they felt could still benefit tremendously from a program like GEAR UP. The committee discussed this at length, but under the statute Partnerships cannot serve students in schools that do not include a 7th grade. Additionally, several negotiators thought that although others could certainly benefit from GEAR UP services, the emphasis of GEAR UP was intended for students in middle grades (i.e. schools that include a 7th grade), and wanted to ensure that GEAR UP funds reached the population for which they were intended. Students benefit most in the middle grades; research shows that course and other decisions in the middle grades are critical in determining a student's chances of going to college. The definition of schools with a 7th grade already includes a broad range of school configurations without diluting the program's unique focus on the middle grades.

Section 694.4 Changes in the Cohort

Current regulations: Under current regulations, a Partnership or State that chooses to use a cohort approach must serve, as part of the cohort, any additional students who may have enrolled in the participating school, at the grade level of the students in the cohort, after the cohort began receiving GEAR UP services. The current regulations also provide that if, after completing the last grade level offered by the school at which the cohort began to receive GEAR UP services, not all the students in the cohort move on to the same school, the Partnership or the State may, but is not required to, provide services to all of those students. However, the Partnership or State must continue to provide GEAR UP services to at least those students in the cohort who attend subsequent participating schools that enroll a substantial majority of the students in the cohort.

Proposed Regulations: The proposed regulations would keep the same language as in the current regulations to address the students a Partnership or State must serve when there are changes in the cohort.

Reasons: The committee agreed that any new student who enrolls in a participating school and joins a GEAR UP cohort before the cohort completes the GEAR UP program in that school, should have the opportunity to benefit from the direct services the other cohort students are receiving. The committee also agreed that some students who began in the cohort are likely to leave the participating school as well, and that GEAR UP programs should not be required to serve those students.

The committee also recognized that as the cohort moves on to a subsequent participating school (for example, a high school), a single middle-grades school could feed into more than one high school. Some cohorts may, therefore, eventually be distributed among several schools. The committee agreed that Partnerships or States should be required to continue providing GEAR UP services to at least those students in the cohort that attend participating schools that enroll a substantial majority of the students in the cohort. In doing so, the maximum number of students from the original cohort would continue to receive services, without placing an undue burden on Partnerships or States.

Sections 694.5 and 694.6 Serving Private School Students

Current Regulations: The current regulations outline the requirements a Partnership or State must meet if it chooses to provide services to private

school students under the program's early intervention component. The regulations are based on private school student participation requirements generally applicable to most elementary and secondary education programs carried out by the Department.

Proposed Regulations: The proposed regulations would keep the language from current regulations for providing services to private school students under the program's early intervention component.

Reasons: The committee agreed that regulations are necessary to ensure that Federal funds are used for educational services that are secular, neutral, and nonideological.

Section 694.7 Matching Requirements

Statute: Under section 404C(b) of the HEA, the Secretary may not approve a GEAR UP plan unless the plan provides that the Partnership or State will provide, from State, local, institutional, or private funds, not less than 50 percent of the cost of the program, in cash or in kind. Section 404C(b) also gives the Secretary the authority to modify, by regulation, the 50 percent requirement for Partnerships.

Current Regulations: The current regulations require a Partnership to state in its application the percentage of the cost of the GEAR UP project for each year that the Partnership will provide from non-Federal funds, and then to comply with the matching percentage stated in the application for each year of the project period. Under current regulations, a Partnership must also provide at least 20% of the cost of the project from non-Federal funds for any year in the project period, and the non-Federal share of the cost of the GEAR UP project must be at least 50% of the total cost over the project period.

Proposed regulations: The proposed regulations would keep the requirement that the non-Federal share of the cost of the GEAR UP project be not less than 50 percent of the total cost over the project period. However, the proposed regulations would permit a match lower than 50 percent, but not lower than 30 percent, for Partnerships with three or fewer institutions of higher education as members, and in which the fiscal agent is (1) eligible to receive funds under Title V, Part B of Title III, or section 316 or 317 of the HEA, or (2) a local educational agency. In addition, to qualify for the lower match, the Partnership would have to include only participating schools with a 7th grade in which at least 75 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; and only local educational agencies

in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the National School Lunch Act.

Reasons: The committee agreed that generally the 50 percent matching requirement over the entire project period gives Partnerships broad flexibility in terms of the amount of the project cost that the Partnership must provide for each year of the project. The success of any project depends in part upon strong community support. The 50 percent requirement helps to ensure that the GEAR UP project has strong community support, that all members of the Partnership contribute to the program, in cash or in kind, and that the Partnership can be sustained, even after Federal funds are no longer available, through strong community Partnerships, with support from all partners. The Department also suggested that the poorest and very rural communities were able to meet the match in the fiscal year 1999 competition.

Several negotiators, however, felt that the 50 percent match precluded some of the poorest communities from applying, because they wouldn't have the resources to meet the 50 percent match. The committee discussed a variety of options to address this problem.

One negotiator suggested a waiver of the match. If that wouldn't be possible, the negotiator suggested a minimum match of 20 percent throughout the life of the grant. The negotiator was concerned that many colleges and universities, especially those that serve low-income students, were already burdened by matching requirements of other programs, even where there is flexibility to substitute in-kind services for dollars. Several other negotiators, including the Department, felt that a minimum match of 20 percent throughout the life of the grant was too low, and that other members of the Partnership could and needed to provide more. These negotiators stressed that Partnerships would not need to use cash to meet the match, but could do so through in-kind contributions, which, in spite of the negotiator's concerns, should serve to alleviate the burden.

Another option presented by some negotiators was that Partnerships could be eligible for a 25 percent match if they served only elementary and secondary schools in which at least 50 percent of the students enrolled were eligible for free or reduced-price lunch under the National School Lunch Act, and if they served only LEAs in which at least 50 percent of the students enrolled were eligible for free or reduced-price lunch under the National School Lunch Act.

A third option presented to the committee would have permitted the Secretary to give special consideration to Partnerships with respect to the match either before the Partnership's application was approved or after a grant was awarded. For pre-approval special consideration, a Partnership would apply for special consideration for a match less than 50 percent, and would receive notification from the Secretary as to whether their request was granted within 30 days of the application deadline. Whether the request was pre-approval, or post-award, there would be two circumstances under which a Partnership could apply for special consideration. The first circumstance would be if an emergency, such as a natural disaster, occurred where the Partnership was located that would warrant a lower match.

The other circumstance that could allow a Partnership to apply for a lower match would be if there were within the Partnership systemic issues that could preclude the Partnership from being able to meet the match. To qualify for the lower match, the Partnership would have to show that, in spite of its limited resources, it had an ongoing commitment to serving the educational needs of targeted students. The Partnership would also have to show that it had no access to adequate fiscal resources, or that it was geographically isolated. Finally, this would be available only in geographic areas in which at least 75 percent of the students were eligible for free or reduced-price lunch, or in which there was a high unemployment rate.

The negotiators felt that the provision that appears in the proposed regulations was the best option available. Several negotiators didn't want the first option of either a waiver or a minimum 20 percent match throughout the life of the grant. These negotiators felt that a waiver would be too logistically burdensome, both for the Secretary and for the applicant. These negotiators also felt that a minimum of 20 percent over the life of the grant was too low.

Negotiators also didn't agree to the second option, because they felt it could allow too many applicants to take advantage of a reduced match, which would weaken the projects and mean more Federal money would be spent per project, and fewer projects could be funded.

Negotiators felt that the third option was not the best option for a couple of reasons. One reason is that this option would have required both the applicants and the Department to spend significant amounts of time determining whether

the applicants were in fact eligible for the lower match, since the criteria to qualify for the lower match were subjective and extremely detailed. In addition, this option would have required the Secretary to make individual determinations as to whether an applicant qualified for the lower match.

Negotiators, including the Department, preferred an approach that provided a lower match for an easily definable group of applicants. Negotiators felt that this approach would be less burdensome, both for applicants and for the Department, and would still provide a lower match for the applicants that needed it most.

One negotiator argued that the group of institutions of higher education eligible for the lower match in the proposed regulations should be expanded to include institutions eligible to receive funds under all of Part A of title III of the HEA, instead of just sections 316 and 317. Other negotiators, including the Department, felt that the proposed regulations were sufficiently broad to allow a significant number of Partnerships to be eligible for the reduced match and further believed that including the institutions the negotiator suggested would expand the exception so broadly that it would become the rule.

Section 694.8 Fiscal Agents for Partnerships

Statute: Section 404B(d) of the statute requires that a Partnership designate an Institution of Higher Education (IHE) or a Local Educational Agency (LEA) as the fiscal agent for the partnership.

Current Regulations: The current regulations restate the statutory language and add that the IHE must be an IHE that is not pervasively sectarian.

Proposed Regulations: The proposed regulations would keep the language from the current regulations, but would add language clarifying that although the IHE or LEA must be the fiscal agent, any member of the Partnership can organize the project.

Reasons: Several negotiators wanted to clarify in the regulations that other members of the Partnership, such as community-based organizations, though not eligible to be the fiscal agent, could still be a driving force in a Partnership. Some negotiators felt that without the clarifying language, organizations other than IHEs and LEAs might think they couldn't play a significant organizational role in the Partnership and might be less inclined to join the Partnership.

Section 694.9 Maximum Indirect Cost Rates for States and LEAs

Current Regulations: Although the current regulations don't address indirect cost rates, we addressed indirect cost rates in the application package for GEAR UP. We determined that GEAR UP projects were educational training grants under 34 CFR 74.562. Consistent with that provision in EDGAR, a recipient was limited to the maximum of eight percent or the rate permitted by an applicant's negotiated cost rate agreement, whichever was less. This rate did not apply to costs incurred by State agencies or LEAs.

Proposed Regulations: Under the proposed regulations, the same rule that applies to applicants other than State agencies or LEAs under 34 CFR 74.562 would also apply to State agencies and LEAs, so that all grant recipients' maximum indirect cost rates would be limited to the lesser of the rate established by the negotiated indirect cost agreement, or eight percent of a modified total direct cost base.

Reasons: While both negotiators and the Department recognize that indirect costs are both real and legitimate, they also believe that having large amounts of funds compensate partners for their general overhead and related expenses is inconsistent with the purpose of the program. The negotiating committee agreed that the eight percent maximum on indirect cost reimbursement is a fair percentage that still allows significant funds to be available for direct grant services.

Section 694.10 Requirements for Awards Under the Scholarship Component

Section 694.10(a) Amount of Scholarship

Statute: Section 404E of the HEA requires States that participate in GEAR UP to establish or maintain a financial assistance program that awards scholarships to students. The minimum scholarship amount for each fiscal year must not be less than the lesser of 75 percent of the average cost of attendance for an in-State student, in a 4-year program of instruction, at public IHEs in the State, or the maximum Federal Pell Grant funded under section 401 of the HEA for the fiscal year.

Section 404E also requires that GEAR UP scholarships under this section may not be considered for the purpose of awarding Federal grant assistance under title IV of the HEA, except that the total amount of student financial assistance awarded may not exceed a student's total cost of attendance.

Current Regulations: The current regulations include the requirements outlining the minimum scholarship amount, and add that cost of attendance is to be determined under section 472 of the HEA.

The current regulations also require a State, or Partnership that chooses to participate in the scholarship component under section 404E, to ensure that it will not award a GEAR UP scholarship to a student in an amount that, in combination with other student financial assistance under title IV of the HEA, exceeds cost of attendance, again as defined by section 472 of the HEA.

The current regulations further require that a State or Partnership must reduce the scholarship amount proportionally for any student who receives a GEAR UP scholarship and attends an institution on a less than full-time basis during any academic year.

Proposed regulations: The proposed regulations would remain the same as the current regulations with respect to the minimum scholarship amount required. The proposed regulations would describe the statutory requirements, and would keep section 472 of the HEA as the means of determining cost of attendance for establishing the minimum award amount.

The proposed regulations would no longer require a reduction in the scholarship amount for students attending institutions on a less than full-time basis during an academic year. Instead, the proposed regulations would allow a State or Partnership to reduce the scholarship amount to students attending less than full-time, but in no case could the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

Reasons: The negotiators believed that the language in the current regulations regarding the reduction of a scholarship award for students who attend an institution on a less than full-time basis needed to be changed. The negotiators didn't think that the regulations should require that the reduction in scholarship be proportional. Several negotiators pointed out that, at some institutions, a student could attend less than full-time but still be required to pay full-time tuition and fees. In addition, a student may attend less than full-time but may still have to be on campus each day of the week, so transportation costs could be the same regardless of whether a student is attending full- or part-time.

The negotiators therefore decided that a student's scholarship shouldn't necessarily be reduced proportionately when a student attends an institution on

a less than full-time basis. The negotiators thought it would be better for the student if the State or Partnership had the discretion as to whether to reduce the scholarship and if so by how much. However, in no case could the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to the student. For example, if a student attends an institution less than full-time, and the student's tuition and fees are reduced by 25%, then the State or Partnership could, if it chose, reduce the GEAR UP scholarship by no more than 25%. The negotiators felt this was the best way to ensure that students who decided to attend less than full-time could still cover at least the same amount of their tuition and fees with their GEAR UP scholarships.

Section 694.10(b) Scholarships and Pell Grant Recipients

Statute: Section 404E requires the Secretary to ensure that States place a priority on awarding scholarships to students who will receive a Federal Pell Grant for the academic year for which the GEAR UP scholarship is awarded.

Current Regulations: Under the current regulations, a State, or a Partnership that chooses to participate in the scholarship component under section 404E of the HEA, must award GEAR UP scholarships to students who are eligible for a GEAR UP scholarship, and who will receive a Federal Pell Grant for the academic year for which the GEAR UP scholarship is being awarded. If the State or Partnership still has funds remaining after awarding scholarships to those students, it may award scholarships to other eligible students (who will not receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

Proposed Regulations: The proposed regulations would make two substantive changes to the current regulations. First, the proposed regulations would add students "who are eligible to receive" a Federal Pell Grant, rather than just "who will receive" a Federal Pell Grant. Second, the proposed regulations would change "academic year" to "award year." With the exception of these two changes, the proposed regulations are substantively the same as the current regulations.

Reasons: Under the proposed regulations, a State or Partnership would have to award GEAR UP scholarships first to students who will receive, or are eligible to receive, a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded. Negotiators felt that

eligibility was crucial because in many cases it would be very difficult to tell whether a student would actually receive a Federal Pell Grant at the time the GEAR UP scholarship award would be made. The negotiators felt therefore that it was important to include that a student could be eligible to receive a Pell Grant in order to be eligible for the statutory Pell Grant priority. Negotiators felt that eligibility for a Pell Grant still showed that the student was exceptionally needy and therefore deserving of a priority for a GEAR UP scholarship.

In addition, the negotiators changed "academic year" to "award year." Several negotiators felt that using award year would be more appropriate, because student financial aid is generally provided based on an award year, and not an academic year.

The committee also agreed that we would not read the language as it appears in the proposed regulations (i.e. "first" and "during the award year") to penalize a State or Partnership that awarded all of its scholarships at the appropriate time and subsequently additional students became eligible for Pell Grants. Although a State or Partnership must first award scholarships to students they know to be eligible for a Pell Grant, they are not required to award scholarships later for students whom they couldn't have known would be eligible for a Pell Grant at the time the scholarships were awarded.

Section 694.10(c) Continuation Scholarships

Current Regulations: Under the current regulations, a State or a Partnership must award continuation scholarships in successive award years to each student who received an initial scholarship and who continues to be eligible for a scholarship.

Proposed Regulations: The proposed regulations would remain substantively the same as the current regulations.

Reasons: Negotiators felt that it was important to assure students that once they received a scholarship, it would remain available to them for as long as they remained eligible. Because GEAR UP is a program for low-income students, negotiators wanted to be sure that students wouldn't suddenly need to find alternate ways to fund their education after they'd been awarded a scholarship. Negotiators felt it was important not to deter these students from going to college because there was no guarantee that there would be money available for them after they had completed a year or more of college. With these regulations, GEAR UP

students who receive a GEAR UP scholarship can be assured that for as long as they remain eligible, they will receive GEAR UP scholarship money.

Additionally, negotiators discussed whether grantees would still be required to provide continuation scholarships if Federal funding was discontinued during the life of the grant. We clarified for the negotiators that if Federal funding were discontinued during the life of the grant, we wouldn't require grantees to continue to come up with their share of the funds. If Federal funding is provided throughout the life of the grant, however, a grantee would be obligated to provide continuation scholarships to students who remain eligible for scholarships even after the grant period has ended.

Section 694.11 Disclosure Requirements Regarding an Institution's Treatment of a GEAR UP Scholarship in Relation to Other Student Financial Assistance

Statute: Under section 404E of the HEA, scholarships provided under section 404E may not be considered for the purpose of awarding Federal grant assistance under title IV, except that in no case may the total amount of financial assistance awarded to a student under title IV exceed that student's total cost of attendance.

In addition, section 404C of the HEA requires that the plan that a State or Partnership submits to be eligible for a GEAR UP grant must contain provisions designed to ensure that funds provided under GEAR UP will supplement and not supplant funds expended for existing programs.

Current regulations: The current regulations essentially reiterate the statutory provision that a GEAR UP scholarship must not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA. In addition, the current regulations established the order in which postsecondary student financial assistance must be awarded for each recipient of a GEAR UP scholarship.

Proposed regulations: The proposed regulations would modify the current regulations. Under the proposed regulations, an institution may have to disclose its policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance. An institution would not be required to disclose its policy for the treatment of a GEAR UP scholarship in relation to other financial assistance if the institution's policy meets certain criteria. The first criterion would be that the GEAR UP scholarship must not be

considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA, as required by section 404E of the statute. The second criterion is that an institution must also have a policy under which the GEAR UP scholarship does not supplant other public or institutional gift aid that the student would otherwise have been eligible to receive.

The final criterion for non-disclosure is that an institution must follow certain procedures when a student receives an overaward of student financial aid. A GEAR UP scholarship, in combination with other student financial assistance awarded under any title IV HEA program and any other grant or scholarship assistance, may not exceed the student's cost of attendance. If that combination does exceed the student's cost of attendance, the institution must, before reducing public or institutional gift aid, reduce other assistance to zero, by the amount in excess of cost of attendance, in a prescribed order. The institution must first reduce loans, then need-based employment, and then the GEAR UP scholarship before reducing public or institutional gift aid, except that the institution may reduce need-based employment first and loans second at the election of the student. This would mean that both the student and the institution would have to agree to reduce the need-based employment first and loans second.

The proposed regulations would therefore require an institution to reduce each category of assistance (i.e. loans, need-based employment, the GEAR UP scholarships) to zero, by the amount in excess of cost of attendance, before reducing the next category. For example, if a student's award package exceeds cost of attendance by \$500 and the student has \$400 in loans, the institution would have to reduce the loans to zero and then reduce the need-based employment by \$100 to ensure that the package wouldn't exceed cost of attendance.

The proposed regulations would allow an institution to reduce its institutional aid before reducing a GEAR UP scholarship only if it determines in writing that there are exceptional circumstances related to the GEAR UP student's institutional aid that are unique to that GEAR UP student. For example, an exceptional circumstance could occur if it's clear that allowing the institution to spend the GEAR UP money and reduce the student's institutional award would benefit the GEAR UP student. What would be key to the determination of whether something is an exceptional

circumstance is the institution's alternative use of funds that would otherwise be made available to the GEAR UP student in a financial aid package. An exceptional circumstance could exist if the institution commits the institutional aid to make a grant for the future benefit of that student, such as graduate school or if the institution spends the money on a special curriculum or extra support for that student.

If exceptional circumstances do exist and an institution does reduce the GEAR UP student's institutional aid before the GEAR UP scholarship, the institution must document and maintain in the GEAR UP student's file the modification that was made to the GEAR UP student's gift aid award package and the reason for the modification. Finally, the institution would be required to provide written notification to the GEAR UP student of the reason for and the specific modification made to the gift aid package.

Under the proposed regulations, an institution would be required to disclose its policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance if it doesn't follow the procedures already discussed. The proposed regulations would require the institution, if it chooses a policy other than that outlined in § 694.11(a), to establish a policy for the treatment of GEAR UP scholarships and inform all prospective students of that policy. Under the proposed regulations, there would be a cross-reference to the definition of "prospective student" in § 668.41, which provides that prospective students are individuals who have contacted an eligible institution requesting information concerning admission to that institution. This could include students who have written a letter, called, or notified by email an institution that they'd like information about admission to the institution.

In addition, the institution would be required to notify the Department by September 1, 2000 that its treatment of GEAR UP scholarships with respect to institutional gift aid is different from the procedures that would not require disclosure. The institution also must notify the Department in a timely manner if, after September 1, 2000, it elects to treat GEAR UP scholarships differently from the procedures that would not require disclosure.

Finally, the proposed regulations would make clear that regardless of the disclosure requirements, all institutions must follow the procedures outlined in § 694.11 (a) with respect to title IV aid,

regardless of whether the institution was required to disclose its policy.

Reasons: The Department's initial proposal would have required institutions to treat GEAR UP scholarships, with respect to other student financial assistance, in the same way as the procedures that do not require disclosure in the proposed regulations as they appear in this NPRM and also to apply this requirement to other private scholarship funds. However, one negotiator objected that those procedures meant that the Federal government would be putting conditions on how institutions and private charities package or award their own scholarship aid. The negotiator was concerned that this could set a negative precedent for future programs and regulations and ultimately penalize schools that do the most for needy students, such as those that practice need-blind admissions. The negotiator also argued that the "supplement not supplant" language in the GEAR UP legislation applies to programmatic funds, not to individual student aid packages funded through private dollars at colleges not part of a GEAR UP partnership. The negotiator also argued that the Department's interpretation gave special treatment to GEAR UP students over other needy students, including many in existing early intervention programs. Finally, it was pointed out that some private scholarship money is "last-dollar." To attempt to make the GEAR UP program last-dollar might have the perverse effect of decreasing a GEAR UP student's overall aid package by removing a student's eligibility for these funds.

Other negotiators, including the Department, agreed that private charitable scholarships, other than institutional aid, should be excluded from the regulation. With regard to institutional aid, however, these negotiators pointed out that it was not unprecedented for the Federal government to place conditions on such aid to protect the Federal fiscal interest. Several negotiators noted that the Federal Government had a long history of placing maintenance-of-effort, supplement-not-supplant, and similar restrictions on institutional aid as a condition of receiving Federal funds. These negotiators also felt that the Federal Government should ensure that not only its funds, but also the matching funds provided in good faith by other GEAR UP donors, such as school districts, service clubs, businesses, and SEAs and State higher education agencies, are used properly by institutions for the intended purpose of

aiding GEAR UP students, not to supplant institutional scholarship aid.

These negotiators also rejected the suggestion that putting conditions on institutional scholarship aid penalizes any institutions. All institutions would be treated the same, wherever Federal GEAR UP funds were used. They argued that it cannot be considered an institutional penalty when students come to an institution with GEAR UP scholarships to help pay for college, in addition to the other scholarships for which they would otherwise qualify. The fact that some institutions would consider the conditions a denial of an opportunity to exchange GEAR UP aid for other aid, which could be used for other purposes, is not an institutional penalty but a prudent measure to prevent misuse of Federal program funds.

These negotiators rejected the suggestion that supplement-not-supplant should not apply to individual student aid packages. They agreed with the point that applying this provision to individual student aid packages gives special treatment to GEAR UP students (and TRIO and NEISP students who receive a GEAR UP scholarship) above others, but noted that this is the whole point of the GEAR UP program. They pointed out that GEAR UP scholarships are not a general need-based aid program, or an institutional aid program, but a scholarship program to motivate individual GEAR UP students and help them pay for college. The committee agreed, in response to a negotiator's concern, that excess GEAR UP scholarships would go to other GEAR UP students and not to the Federal Treasury.

In an effort to reach consensus, all the negotiators agreed to fulfill the intent of GEAR UP scholarships through public disclosure and public information. By doing so, the institution would be able to treat GEAR UP scholarships as they relate to certain other non-Title IV student financial assistance as it sees fit. An institution would, however, have to disclose, to both prospective students and the Department, that it has chosen not to follow the procedures in the proposed regulations and would have to disclose to prospective students its policy for GEAR UP scholarships. GEAR UP scholarship students would then know how institutions plan to treat GEAR UP scholarships so that they can make informed decisions about which institution they want to apply to and attend based on the amount and type of financial assistance they are likely to receive.

In addition to the reasons already mentioned, the negotiators felt that

disclosure requirements were the best option for several other purposes. A list of the institutions that report their policies to the Department will be made available to all GEAR UP Partnership and State grant programs so that they can advise students that a GEAR UP scholarship may not result in any additional benefits if used at any of the institutions on the list. Also, the Department may use the list to distinguish among institutions in future GEAR UP program evaluations, because GEAR UP scholarships should not be expected to make a program performance difference at institutions where they are packaged not to make such a difference. Finally, any institution that wants to comply with the non-supplantation procedures, but can't due to exceptional circumstances, related to a particular student, could document the circumstances, rather than inform the Department that it isn't adopting the policy in the proposed regulations. For example, if a GEAR UP student were eligible for a non-GEAR UP scholarship and any portion of the scholarship that wasn't needed for undergraduate education could be saved for graduate education, the institution could benefit the student by reducing this other scholarship before reducing the GEAR UP scholarship.

Section 694.12 Financial Assistance for Partnerships That Don't Participate in the Scholarship Component Under Section 404E of the HEA

Current regulations: The current regulations provide that a GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education to students who participate in the early intervention component only if the financial aid is directly related to, and in support of, other activities of the Partnership under the early intervention component of GEAR UP.

Proposed Regulations: The proposed regulations would keep the language from the current regulations, with minor additions. One addition is that the proposed regulations would add language to clarify that the requirements in this section apply to Partnerships only if they use either GEAR UP funds, or non-Federal funds used to comply with the matching requirement, to provide the financial assistance for postsecondary education. In addition, the proposed regulations would add the requirement that the Partnership comply with the provisions in §§ 694.10(c) and 694.11, governing the treatment of student financial assistance under GEAR UP.

Reasons: Several negotiators asked for this clarifying language. Negotiators felt the regulation could be read to imply that any financial assistance provided by the Partnership would have to be directly related to, and in support of, other activities of the Partnership under the early intervention component. Negotiators wanted it to be clearer that Partnerships could also provide financial assistance using non-Federal funds that the Partnership was not using to comply with the matching requirement to students that participated in GEAR UP, and that this financial assistance would not be subject to the requirements of this section. We therefore agreed to add language that would make the clarification.

In addition, negotiators, including the Department, realized that financial assistance provided under this section should be subject to similar requirements as the financial assistance provided by the scholarship component in section 404E of the HEA.

Several negotiators wanted clarification that in addition to these requirements, there are other, more general principles that apply to Partnerships that want to offer financial assistance. For example, there are principles of obligation law that dictate when and how financial assistance can be awarded if it is going to be counted toward the match in a particular fiscal year. The committee agreed that it is not necessary or desirable to have this kind of information in regulations, but that there would need to be non-regulatory guidance from the Department on other restrictions that might apply.

Section 694.13 Determination of the State Applicant

Current regulations: The current regulations provide that the Governor of a State must designate which State agency applies for, and administers, a State grant under GEAR UP.

Proposed regulations: The proposed language would keep the language in the current regulations.

Reasons: Several negotiators mentioned that they would prefer a more collaborative approach to the designation of which State agency will apply for and administer a GEAR UP State grant. The negotiating committee therefore discussed whether others, such as the State Educational Agency (SEA), or the Chief State School Officer, should be involved in the decision. Although the negotiating committee agreed that collaboration was important, many on the committee felt that there was no need to add language to the regulations, because, in most if not all

cases, the Governor of a State will collaborate with the SEA, the Chief State School Officer, and other relevant agencies and people. In addition, several negotiators felt that although many should be involved in the decision and implementation of the grant, the final decision needs to rest with the State's chief executive officer, the Governor. The Governor is in the best position to ensure that agencies collaborate in the design and implementation of the GEAR UP project. Finally, some negotiators felt that the Governor was necessary to bridge the gap between the elementary and secondary education community and the higher education community, both of which are involved in GEAR UP.

The proposed regulations remain unchanged, therefore, with the Governor responsible for designating the State agency that applies for and administers the GEAR UP State grant. However, we expect that Governors of States applying for GEAR UP grants will collaborate with appropriate agencies and officials to determine which agency should apply on behalf of the State and how agencies should collaborate in implementing the grant.

Section 694.14 21st Century Certificates

Statute: Section 404F of the HEA requires that the Secretary ensure that 21st century scholarship certificates are provided to all students participating in GEAR UP. In addition, the certificate must be personalized for each student and indicate the amount of Federal financial aid for college a student may be eligible to receive.

Current Regulations: The current regulations provide that a State or Partnership must provide, in accordance with such procedures as the Secretary may specify, a 21st Century Scholar Certificate from the Secretary of Education to each student participating in the early intervention component of its GEAR UP project. In addition, current regulations require each certificate to be personalized and to indicate the amount of Federal financial aid for college that a student may be eligible to receive.

Proposed Regulations: The proposed regulations would keep the language that is in the current regulations.

Reasons: The negotiating committee agreed that the statute requires the Secretary to ensure that the students participating in GEAR UP each receive an individualized certificate, indicating the amount of Federal financial aid for college that a student may be eligible to receive. The regulations make it clear that the State or Partnership must

provide the certificate to each student, but that the certificate will be from the Secretary. Since the certificates must be personalized, the best and most efficient way to award the certificates is to involve the Partnerships and States, since they are the more likely to have the students' personal information, such as the students' names and the date the certificate will be presented.

Section 694.15 NEISP States

Statute: Section 404A(b)(2) of the HEA requires that the Secretary ensure that students served under the chapter 2 of subpart 2 of part A of title IV of the HEA, the National Early Intervention Scholarship and Partnership (NEISP) Program, on the day before the date of enactment of the Higher Education Amendments of 1998 (Amendments) continue to receive assistance through the completion of secondary school.

Current regulations: The current regulations basically restate the requirements in statute for any State that receives a GEAR UP grant that served the students referred to in the statute.

Proposed regulations: The proposed regulations would keep the language in the current regulations.

Reasons: The negotiators agreed that the statute requires the Secretary to ensure that students served under the NEISP program continue to receive assistance through the completion of secondary school. The regulations clarify that the chapter mentioned in the statute is NEISP, and that the date of enactment of the Amendments was October 7, 1998.

Section 694.16 Mandatory Priority

Statute: Section 404A(b)(2) of the HEA requires that the Secretary, in making awards to States, give priority to eligible entities that on the date of enactment of the Amendments, carried out successful opportunity programs under chapter 2 of subpart 2 of part A of title IV, and that have a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Current regulations: The current regulations essentially restate the statute, with language that the date of enactment was October 7, 1998, and that the chapter referred to is the NEISP program, which GEAR UP replaced.

Proposed regulations: The proposed regulations basically restate the proposed regulations, with only small editorial changes.

Reason: The statutory priority remains in the regulations because the language is clearer than in the statute,

and because there are also permissible priorities in the regulations, and so it seemed clearer to people to have all the priorities appear in the same place, rather than having to reference both the regulations and the statute to know what priorities applied.

Section 694.17 Permissible Priorities

Current regulations: The current regulations include two priorities that the Secretary would have the discretion to choose for the fiscal year 1999 competition. Under those regulations, the Secretary could give priority to projects by Partnerships or States that serve a substantial number or percentage of students who reside in an Empowerment Zone, including a Supplemental Empowerment Zone, or Enterprise Community designated by the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture. In addition, the Secretary could give priority to Partnerships that establish or maintain a financial assistance program that awards scholarships to students either in accordance with section 404E of the HEA, or in accordance with these regulations.

Proposed regulations: The proposed regulations would keep the language in the current regulations, with some minor changes. In the priority for projects in Empowerment Zones or Enterprise Communities, the proposed regulations would allow a priority for projects that serve a substantial number or percentage of students who either reside in, or attend a school in, an Empowerment Zone or Enterprise Community. In addition, the priority for Partnerships that establish or maintain a financial assistance program that awards scholarships would include language that the scholarship program is to strengthen the early intervention component of its GEAR UP project.

Reasons: For the priority about Empowerment Zones and Enterprise Communities, several negotiators felt that Partnerships or States that serve a substantial number of students who attend a school in an Empowerment Zone or Enterprise Community should be eligible for the priority, even if the students don't live in an Empowerment Zone or Enterprise Community. The committee discussed whether it could ever occur that students who weren't truly needy would ever attend schools in Empowerment Zones or Enterprise Communities. The Committee decided that it was not a concern because the other eligibility requirements would still apply.

For the priority for Partnerships that include a scholarship program in their

GEAR UP project, several negotiators were concerned that this priority would penalize Partnerships that had very strong early intervention components, but no scholarships. These negotiators felt that the early intervention component was crucial to the success of GEAR UP, and that Partnerships shouldn't be penalized for concentrating their efforts and sometimes very limited resources on early intervention. The committee discussed the importance of scholarships, and the need to ensure that the benefits of the early intervention component resulted in more students going to college. The committee therefore decided to add language to the priority to ensure that the priority wouldn't be read to mean that the scholarship component was more important, or could replace, the early intervention component. The priority is not intended to imply that scholarships are more important than the early intervention component, only that scholarships are an excellent way to supplement an already strong early intervention component.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed

regulations without impeding the effective and efficient administration of the program.

Summary of Potential Costs and Benefits

Sections 694.1, 694.3–694.6, 694.8, and 694.12–694.17 of the proposed regulations would provide guidance for complying with statutory requirements and ensure the proper and effective expenditure of program funds. These regulations would set and clarify: the maximum amount that may be awarded to a Partnership or State; the requirements for serving a cohort of students; the requirements for serving private school students; the requirements for Partnerships in designating a fiscal agent; the conditions under which Partnerships may provide financial assistance to students; the procedure for designating a State agency; the requirements for providing 21st Century Scholarship Certificates; the requirements for States that served National Early Intervention Scholarship and Partnership students; and the priorities that must and may be established by the Secretary. There would be no costs associated with these regulations.

Section 694.2 of the proposed regulations would clarify those services that a Partnership or State that chooses to use the cohort approach must provide. It would require appropriate, supplemental services to be targeted to students with the greatest needs. The Department has determined that the cost to provide these services would be minimal, and that the benefit would exceed the cost. This regulation would ensure that the neediest students in programs with large cohorts would receive a level of services sufficient to succeed in the program.

Section 694.7 of the proposed regulations would modify the matching requirements for Partnerships. It would allow Partnerships to set their own matching levels in any year, as long as they comply with the matching percentage stated in their application and provide at least 50 percent of the total project cost over the total project period. It would also allow Partnerships that meet certain, specified criteria to provide as low as 30 percent of the total project cost over the total project period. This regulation would provide greater flexibility to Partnerships in meeting matching requirements, giving Partnerships the ability to reduce costs in any given year and the ability to reduce costs over the total project period if they meet the specified criteria.

Section 694.9 of the proposed regulations would set a maximum indirect cost rate of 8 percent for State and local government agencies. The potential cost associated with this regulation would be the amount of indirect costs that a State or local government agency could not charge to program funds. This amount would be the difference between a State or local government agency's negotiated indirect cost agreement, if it would exceed 8 percent, and the 8 percent maximum rate allowed. The Department has determined that the benefit from this regulation would exceed the potential cost. Setting a maximum indirect cost rate would increase the efficiency of program funds by ensuring that the vast majority of funds are used to provide direct services to students. Furthermore, the proposed regulation would support the competitive nature of the program by setting a maximum indirect cost rate that reflects the current indirect cost rates of the States that have been awarded grants.

Section 694.10 of the proposed regulations would provide guidance for complying with statutory requirements for scholarships awarded under this program. It would require States and Partnerships that participate in the scholarship component to award continuation scholarships to those students who receive an initial scholarship, as long as those students remain eligible. The potential cost of this regulation would be the cost of scholarships for those students who continue to remain eligible beyond the time period for which a State or Partnership has budgeted. Given the substantial matching resources of States, which are required to participate in the scholarship component, the Department has determined the potential cost of this requirement to be minimal. More importantly, this regulation would ensure that students receive the continuing financial support that is necessary to complete their postsecondary education.

Section 694.11 of the proposed regulations would clarify the statutory requirements for scholarships as they relate to title IV aid. It would require institutions of higher education to disclose their policy for the treatment of a scholarship under this program, if they choose not to follow the specified procedures for determining financial assistance eligibility and making adjustments in the case of an over-award. The minimal cost of this regulation would be the cost for institutions to disclose their policy or to follow the procedures in the regulation. The Department has determined that the

benefit of the proposed regulation would exceed the cost because students would be better informed about the treatment of their scholarship and the calculation of their financial assistance at competing institutions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 694.1 *What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities that would be affected by these regulations are States and State agencies, local education agencies (LEAs), local community organizations, and institutions of higher education. States and State agencies are not "small entities" under the Regulatory Flexibility Act.

Institutions of higher education are defined as "small entities," according to the U.S. Small Business Administration Size Standards, if they are for-profit or nonprofit institutions with total annual revenue below \$5,000,000 or if they are

institutions controlled by governmental entities with populations below 50,000. Small LEAs and local community organizations are small entities for the purposes of the Regulatory Flexibility Act.

The proposed regulations would not have a significant economic impact on small entities because the regulations would not impose excessive regulatory burden or require unnecessary Federal supervision. The regulations would give small entities greater flexibility in meeting matching requirements, provide guidance for complying with statutory provisions, and impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act

Section 694.7 contains an information collection requirement. In addition, there is an application package associated with the regulations that contains information collection. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section as well as a copy of the application package to the Office of Management and Budget (OMB) for its review.

Collection of Information—
Discretionary Grant Programs—
Application Package for the Gear UP
Discretionary Grant Program

The information collection would apply to two types of grants—
Partnership grants and State grants—
awarded to help more low-income students stay in school, study hard, and take the right courses to go to college. By June 2000, approximately 74 new Partnership grants averaging \$460,000 a year for five years, and 6 new State grants averaging \$2.1 million per year for five years will be awarded.

The likely respondents would be State agencies; two- and four-year degree granting institutions of higher education; LEAs; businesses and other for-profit entities; nonprofit institutions; small businesses or organizations; and public and private schools.

This collection of information is necessary for applicants to apply for new grants under the GEAR UP program. Grants will be awarded on the basis of competitively reviewed applications submitted to the U.S. Department of Education, Office of Postsecondary Education (OPE), Policy, Planning & Innovation (PPI), GEAR UP grant competition. Continued support for these grants is based on the availability of funds and substantial progress in achieving project objectives. This application process occurs once

each year to enable applicants to compete for Federal funds annually appropriated by Congress. The Department of Education is requesting approval of the information collection used to apply for new grants under this program.

The total annual public reporting and record keeping burden for this information is 20 hours per application. We anticipate that there will be 800 applications (770 Partnership Grant applications and 30 State Grant applications), for a total burden of 16,000 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;

- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;

- Enhancing the quality, usefulness, and clarity of the information we collect; and

- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information associated with these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.334 Gaining Early Awareness and Readiness for Undergraduate Programs)

List of Subjects in 34 CFR Part 694

Colleges and universities, Elementary and secondary education, Grant programs-education, Student aid.

Dated: December 15, 1999.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 694 to read as follows:

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

Sec.

- 694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?
- 694.2 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?
- 694.3 What are the requirements for a cohort?
- 694.4 Which students must a State or Partnership serve when there are changes in the cohort?
- 694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?
- 694.6 Who may provide GEAR UP services to students attending private schools?
- 694.7 What are the matching requirements for a GEAR UP Partnership?

694.8 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?

694.9 What is the maximum indirect cost rate for an agency of a State or local government?

694.10 What are the requirements for awards under the program's scholarship component under section 404E of the Higher Education Act of 1965, as amended (HEA)?

694.11 What are the disclosure requirements regarding an institution's treatment of a GEAR UP scholarship in relation to other student financial assistance?

694.12 Under what conditions may a Partnership that does not participate in the GEAR UP scholarship component under section 404E of the HEA provide financial assistance for postsecondary education to students under the GEAR UP early intervention component?

694.13 How does a State determine which State agency will apply for, and administer, a State grant under this program?

694.14 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?

694.15 What requirements apply to a State that served students under the National Early Intervention Scholarship and Partnership program (NEISP) and that receives a GEAR UP grant?

694.16 What priority must the Secretary establish?

694.17 What priorities may the Secretary establish?

Authority: 20 U.S.C. 1070a-21 to 1070a-28

§ 694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?

(a) *Partnership grants.* The maximum amount that the Secretary may award each fiscal year for a GEAR UP Partnership grant is calculated by multiplying—

(1) \$800; by

(2) The number of students the Partnership proposes to serve that year, as stated in the Partnership's plan.

(b) *State grants.* The Secretary establishes the maximum amount that may be awarded each fiscal year for a GEAR UP State grant in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1070a-23)

§ 694.2 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?

A Partnership, or a State that chooses to use a cohort approach in its GEAR UP early intervention component, must, except as provided in § 694.4—

(a) Provide services to at least one entire grade level (cohort) of students (subject to § 694.3(b)) beginning not later than the 7th grade;

(b) Ensure that supplemental appropriate services are targeted to the students with the greatest needs; and

(c) Ensure that services are provided through the 12th grade to those students.

(Authority: 20 U.S.C. 1070a-22)

§ 694.3 What are the requirements for a cohort?

(a) *In general.* Each cohort to be served by a Partnership or State must be from a participating school—

(1) That has a 7th grade; and

(2) In which at least 50 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; or

(b) *Public housing exception.* If the Partnership or State determines it would promote program effectiveness, a cohort may consist of all of the students in a particular grade level at one or more participating schools who reside in public housing, as defined in section 3(b)(1) of the United States Housing Act of 1937.

(Authority: 20 U.S.C. 1070a-22)

§ 694.4 Which students must a State or Partnership serve when there are changes in the cohort?

(a) *At the school where the cohort began.* A Partnership or State must serve, as part of the cohort, any additional students who—

(1) Are at the grade level of the students in the cohort; and

(2) Begin attending the participating school at which the cohort began to receive GEAR UP services.

(b) *At a subsequent participating school.* If not all of the students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, a Partnership or a State—

(1) May continue to provide GEAR UP services to all students in the cohort; and

(2) Must continue to provide GEAR UP services to at least those students in the cohort that attend participating schools that enroll a substantial majority of the students in the cohort.

(Authority: 20 U.S.C. 1070a-22)

§ 694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?

(a) *Secular, neutral, and nonideological services or benefits.*

Educational services or other benefits, including materials and equipment, provided under GEAR UP by a Partnership or State that chooses to provide those services or benefits to students attending private schools, must be secular, neutral, and nonideological.

(b) *Control of funds.* In the case of a Partnership or State that chooses to provide services under GEAR UP to students attending private schools, the fiscal agent (in the case of a Partnership) or a State agency (in the case of a State) must—

(1) Control the funds used to provide services under GEAR UP to those students;

(2) Hold title to materials, equipment, and property purchased with GEAR UP funds for GEAR UP program uses and purposes related to those students; and

(3) Administer those GEAR UP funds and property.

(Authority: 20 U.S.C. 1070a-21 to 1070a-28)

§ 694.6 Who may provide GEAR UP services to students attending private schools?

(a) GEAR UP services to students attending private schools must be provided—

(1) By employees of a public agency; or

(2) Through contract by the public agency with an individual, association, agency, or organization.

(b) In providing GEAR UP services to students attending private schools, the employee, individual, association, agency, or organization must be independent of the private school that the students attend, and of any religious organization affiliated with the school, and that employment or contract must be under the control and supervision of the public agency.

(c) Federal funds used to provide GEAR UP services to students attending private schools may not be commingled with non-Federal funds.

(Authority: 1070a-21 to 1070a-28)

§ 694.7 What are the matching requirements for a GEAR UP Partnership?

(a) *In general.* A Partnership must—

(1) State in its application the percentage of the cost of the GEAR UP project the Partnership will provide for each year from non-Federal funds, subject to the requirements in paragraph (b) of this section; and

(2) Comply with the matching percentage stated in its application for each year of the project period.

(b) *Matching requirements.* (1) Except as provided in paragraph (b)(2) of this section, the non-Federal share of the cost of the GEAR UP project must be not

less than 50 percent of the total cost over the project period.

(2) A Partnership that has three or fewer institutions of higher education as members may provide less than 50 percent, but not less than 30 percent of the total cost over the project period if it includes—

(i) A fiscal agent that is eligible to receive funds under Title V, or Part B of Title III, or section 316 or 317 of the HEA, or a local educational agency;

(ii) Only participating schools with a 7th grade in which at least 75 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; and

(iii) Only local educational agencies in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the National School Lunch Act.

(3) The non-Federal share of the cost of a GEAR UP project may be provided in cash or in-kind.

(Authority: 20 U.S.C. 1070a–23)

§ 694.8 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?

Although any member of a Partnership may organize the project, a Partnership must designate as the fiscal agent for its project under GEAR UP—

(a) A local educational agency; or
(b) An institution of higher education that is not pervasively sectarian.

(Authority: 20 U.S.C. 1070a–22)

§ 694.9 What is the maximum indirect cost rate for an agency of a State or local government?

Notwithstanding 34 CFR 75.560–75.562 and 34 CFR 80.22, the maximum indirect cost rate that an agency of a State or local government receiving funds under GEAR UP may use to charge indirect costs to these funds is the lesser of—

(a) The rate established by the negotiated indirect cost agreement; or
(b) Eight percent.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.10 What are the requirements for awards under the program's scholarship component under section 404E of the HEA?

(a) *Amount of scholarship.* (1) Except as provided in paragraph (a)(2) of this section, the amount of a scholarship awarded under section 404E of the HEA must be at least the lesser of—

(i) 75 percent of the average cost of attendance, as determined under section 472 of the HEA, for in-State students in 4-year programs of instruction at public institutions of higher education in the State; or

(ii) The maximum Federal Pell Grant award funded for the award year in which the scholarship will be awarded.

(2) If a student who is awarded a GEAR UP scholarship attends an institution on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case shall the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) *Pell Grant recipient priority.* A State, or a Partnership that chooses to participate in the scholarship component under section 404E of the HEA in its GEAR UP project—

(1) Must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded and who are eligible for a GEAR UP scholarship under the eligibility requirements in section 404E of the HEA; and

(2) May, if GEAR UP scholarship funds remain after awarding scholarships to students under paragraph (b)(1) of this section, award GEAR UP scholarships to other eligible students (who will not receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

(c) *Continuation scholarships.* A State, or a Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA in its GEAR UP project, must award continuation scholarships in successive award years to each student who received an initial scholarship and who continues to be eligible for a scholarship.

(Authority: 20 U.S.C. 1070a–25)

§ 694.11 What are the disclosure requirements regarding an institution's treatment of a GEAR UP scholarship in relation to other student financial assistance?

(a) *No disclosure.* No disclosure of an institution's policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance is necessary if the institution's policy is as follows:

(1) *Other grant assistance.* A GEAR UP scholarship—

(i) Is not considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA; and

(ii) Does not supplant other public or institutional gift aid that the student would otherwise have been eligible to

receive (such as grants, scholarships, and tuition discounts) unless the conditions in § 694.11(b)(2) apply.

(2) *Cost of attendance.* A GEAR UP scholarship, in combination with other student financial assistance awarded under any title IV HEA program and any other grant or scholarship assistance, may not exceed the student's cost of attendance.

(3) *Overawards.* (i) *In general.* If the combination of the GEAR UP scholarship and other student financial assistance under title IV of the HEA and any other grant or scholarship assistance exceeds the student's cost of attendance, the institution must, before reducing public or institutional gift aid, reduce the assistance to zero, by the amount in excess of cost of attendance, in the following order—

(A) Loans;

(B) Need-based student employment;

(C) The GEAR UP scholarship;

(ii) *Exception.* The institution may reduce need-based employment first and loans second at the election of the student.

(4) Notwithstanding paragraph (a)(3) of this section, an institution may reduce its institutional aid before reducing a GEAR UP scholarship only if—

(i) It determines and documents in writing that there are exceptional circumstances related to the GEAR UP student's institutional aid that are unique to that GEAR UP student;

(ii) It documents and maintains in the GEAR UP student's file the modification that was made to the GEAR UP student's gift aid award package and the reason for the modification; and

(iii) It provides written notification to the GEAR UP student of the reason for and the specific modification that was made to the gift aid package.

(b) *Disclosure.* (1) Disclosure of an institution's policy for the treatment of a GEAR UP scholarship in relation to other student financial assistance is required if the institution does not follow the procedures set forth in paragraph (a) of this section.

(2) If an institution does not follow the procedures in paragraph (a) of this section it must—

(i) Establish a policy for the treatment of GEAR UP scholarships and inform all prospective students, as defined in § 668.41 of this chapter;

(ii) Notify the Department by September 1, 2000 that its treatment of GEAR UP scholarships with respect to institutional gift aid is different from the procedures in paragraph (a) of this section; and

(iii) If, after September 1, 2000, it elects to treat GEAR UP scholarships

differently from the procedures in paragraph (a) of this section, notify the Department in a timely manner of that decision.

(c) Notwithstanding the disclosure requirements with respect to GEAR UP and its relation to other student financial assistance, an institution must follow the procedures in paragraph (a) of this section as they relate to title IV aid.

(Authority: 20 U.S.C. 1070a-25; 20 U.S.C. 3474)

§ 694.12 Under what conditions may a Partnership that does not participate in the GEAR UP scholarship component under section 404E of the HEA provide financial assistance for postsecondary education to students under the GEAR UP early intervention component?

A GEAR UP Partnership that does not participate in the GEAR UP scholarship component under section 404E of the HEA may provide financial assistance for postsecondary education, either with funds under this chapter, or with non-Federal funds used to comply with the matching requirement, to students who participate in the early intervention component of GEAR UP if—

(a) The financial assistance is directly related to, and in support of, other activities of the Partnership under the early intervention component of GEAR UP; and

(b) It complies with the requirements in §§ 694.10(c) and 694.11.

(Authority: 20 U.S.C. 1070a-21 to 1070a-28)

§ 694.13 How does a State determine which State agency will apply for, and administer, a State grant under this program?

The Governor of a State must designate which State agency applies

for, and administers, a State grant under GEAR UP.

(Authority: 20 U.S.C. 1070a-21 to 1070a-28)

§ 694.14 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?

(a) A State or Partnership must provide, in accordance with procedures the Secretary may specify, a 21st Century Scholar Certificate from the Secretary to each student participating in the early intervention component of its GEAR UP project.

(b) 21st Century Scholarship Certificates must be personalized and indicate the amount of Federal financial aid for college that a student may be eligible to receive.

(Authority: 20 U.S.C. 1070a-26)

§ 694.15 What requirements apply to a State that served students under the National Early Intervention Scholarship and Partnership program (NEISP) and that receives a GEAR UP grant?

Any State that receives a grant under this part and that served students under the NEISP program on October 6, 1998 must continue to provide services under this part to those students until they complete secondary school.

(Authority: 20 U.S.C. 1070a-21)

§ 694.16 What priority must the Secretary establish?

For any fiscal year, the Secretary selects the following priority for any State grant applicant that—

(a) On October 6, 1998, carried out successful educational opportunity programs under the National Early Intervention Scholarship and

Partnership program (as that program was in effect on that date); and

(b) Has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

(Authority: 20 U.S.C. 1070a-21)

§ 694.17 What priorities may the Secretary establish?

For any fiscal year, the Secretary may select one or more of the following priorities:

(a) Projects by Partnerships or States that serve a substantial number or percentage of students who reside, or attend a school, in an Empowerment Zone, including a Supplemental Empowerment Zone, or Enterprise Community designated by the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture.

(b) Partnerships that establish or maintain a financial assistance program that awards scholarships to students, either in accordance with section 404E of the HEA, or in accordance with § 694.12, to strengthen the early intervention component of its GEAR UP project.

(Authority: 20 U.S.C. 1070a-21 to 1070a-28)

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